

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BROWN BARK III, L.P.,

Plaintiff,

v.

Case No. 08-CV-14509-DT

ONE MANAGEMENT, INC. and JERRY
WATHA,

Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL, IMPOSING COSTS,
AND ORDERING DEFENDANTS TO FILE A NOTICE**

Before the court is Plaintiff Brown Bark III, L.P.'s ("Brown Bark's") unopposed "Motion to Compel Answers to Discovery." Plaintiff served Defendants One Management, Inc. and Jerry Watha with its discovery requests on December 31, 2008. Defendants have not responded to the requests. Plaintiff contacted Defendants by letter on March 10, 2009 in order to allow Defendants to stipulate to provide untimely responses. Defendants did not respond to the letter. Plaintiff filed its current motion on March 14, 2009. Defendants have not responded to the motion. Inasmuch as Defendants have failed to dispute any of the contentions made in Plaintiff's motion, the court will grant the motion.

Federal Rule of Civil Procedure 37 provides that if a party does not timely respond to discovery demands, and a motion to compel is granted, the court must impose sanctions against the party or the party's attorney. Here, the court finds the bulk, if not all, of the delay is attributable to Defendants' counsel. It is ultimately counsel's responsibility to ensure that discovery demands are timely returned and,

certainly, counsel's responsibility to respond to correspondence of opposing counsel as well as to file timely responses to motions. Accordingly, the court will order Defendants' counsel to pay Plaintiff's reasonable expenses incurred in making the motion.

Accordingly,

IT IS ORDERED that Defendants shall respond to Plaintiff's written discovery requests by **April 29, 2008**. Additionally, Defendants shall file a notice with the court by **April 29, 2008** affirmatively stating that they have complied with this court's order. **In the event Defendants fail to file the required notice, the court will issue a default judgment against them in the amount of \$ 697,733.35 plus any applicable interest and fees as sought in the complaint. See Fed. R. Civ. P. 37(b)(2)(A).**

IT IS FURTHER ORDERED that Defendants' counsel shall pay to Plaintiff Brown Bark reasonable costs and attorney fees incurred in filing its March 14, 2009 motion to compel. The parties should attempt to stipulate to the amount of costs and fees, but if they are unable to do so, Plaintiff shall file, no later than **May 14, 2009**, a bill of costs and affidavit detailing its costs and fees for the court's review.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: April 23, 2009

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, April 23, 2009, by electronic and/or ordinary mail.

S/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522